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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOUTH DIVISION - LONG BEACH COURTHOUSE

BOSCO TUAN TRAN, et al., Plaintiffs, vs. WARREN E&P, INC., etc., et al. Defendants. ______________________________ AND RELATED CROSS-ACTION ______________________________	CASE NO. NC057268 Assigned for all purposes to the Hon. Judge Ross M. Klein, Department 11 **TRIAL BRIEF OF DEFENDANT WARREN E&P, INC. AND CROSS-COMPLAINANT WARREN RESOURCES OF CALIFORNIA, INC.** Trial Date: June 17, 2013

I. BACKGROUND

A. The Parties and Plaintiffs' Business

This case started as a dispute over use of a driveway located on the southern end of Cross-complainant Warren Resources of California, Inc.'s ("WRCI") property. The driveway, located on "Lot G," abuts the tire shop and welding business owned by Plaintiff Sonny & Bosco, Inc. and operated on land owned by Plaintiffs Bosco Tuan Tran and Sonny Tran. This land is often referred to as "Lot 8."

In 2004, Bosco Tuan Tran and Sonny Tran jointly purchased Lot 8 and the tire shop business (called "Martinez Tires Service") from Jesus Gonzalez. Plaintiff Sonny & Bosco, Inc. ("S&B") was formed and, in 2005, it entered into a lease with Global Oil, LLC to lease "the South

East Corner" of Lot G consisting of 5,000 square feet of land. Global Oil sold Lot G to WRCI in 2006. WRCI assumed the lease with S&B as well as a lease on the north side of Lot G with another tenant.

S&B's business consists of performing tire replacement and related mechanical repair services on commercial trucks, i.e., "semis" or "tractor-trailers."

S&B's lease for the south east corner included two distinct areas on the southern end of Lot G, 1) an open area driveway immediately abutting "I" Street, and 2) a gated area immediately behind the driveway. (See Exhibit "A" hereto.) S&B used the driveway to park customers' trucks and employees' vehicles, and to perform repairs. S&B used the leased area behind the gate to store tires and equipment.

B. WRCI Terminates the Tenancy

From 2006 to 2008, S&B made lease payments to WRCI of $1,000.00 per month. In late 2008, WRCI gave notice to S&B and its other tenant on Lot G that their leases were being terminated. Although S&B was supposed to have its tires and equipment off the leased area by January 4, 2009, it did not remove them right away. Further, S&B continued to use the driveway to park vehicles and conduct repairs. For several months thereafter, S&B slowly removed the tires and equipment from behind the gated area and continued to use the driveway for parking and repairs.

WRCI, through its land manager Thomas Dahlgren, worked with Plaintiffs to attempt to get them to fully vacate. WRCI has had many instances where it purchased surface land rights, or subsurface oil and mineral rights, and, in order to use those rights, was required to terminate an assumed lease or evict an existing tenant on the surface of the property. In almost all instances, WRCI has worked amicably with such tenants, and allowed them to take as much time as reasonably needed to vacate the property. In fact, the other tenant on Lot G took over six months to fully vacate his tenancy. This was not an issue for WRCI, as such additional time is built-in to WRCI's procedures for preparing its property for oil extraction operations. WRCI sometimes evicts tenants years before it needs to begin its extraction operations on land. WRCI assumed that the process with Plaintiffs would be similarly amicable, and treated them accordingly.

C. Plaintiffs Refuse to Vacate Because They Believed They Owned the Driveway

But Plaintiffs took more than their reasonable time to vacate. And as months turned into years, Mr. Dahlgren began pressing Plaintiffs harder and more frequently to fully vacate the land. Mr. Dahlgren's efforts were thwarted by a misunderstanding by Plaintiffs, however. Plaintiffs believed they owned the driveway. They believed that it was part of the land Mr. Gonzalez had sold to them when he sold Plaintiffs the tire shop in 2004.

It is very apparent from even a cursory review of the applicable title documents and maps that the driveway was not part of the land sold to Plaintiffs, but Mr. Dahlgren could not successfully communicate this to Plaintiffs. After several meetings in which Plaintiffs continued to assert their ownership over the driveway, Mr. Dahlgren sent Plaintiffs a letter in early 2011 with attached maps explaining their misapprehension. Despite the documentary evidence, Plaintiffs did not believe him, and they continued to use the driveway as their own property.

In 2011, Mr. Dahlgren became more alarmed as the situation was not resolving. He attempted to resolve the issue by offering to lease just the driveway portion to Plaintiffs for a de minimis amount of $300 per month. Plaintiffs, adamant in their belief they owned the driveway, refused the offer. Concerned over Plaintiffs' aggressive but unsupported claim to the driveway, and further concerned about the liability WRCI was assuming by allowing Plaintiffs to continue to perform repairs on heavy trucks on WRCI's property, Mr. Dahlgren, after two years of attempting to resolve the issue, gave Plaintiffs an ultimatum: Get off the driveway or WRCI would have to fence it in. Plaintiffs refused to yield, so in September 2011, WRCI erected the subject fence.

D. Plaintiffs Abandon Their Claim That They Own the Driveway

In response to the fence, this lawsuit was filed by Plaintiffs against Warren E&P, Inc. ("WEP"). Prior to consulting counsel, Plaintiffs had never claimed an easement right over the driveway, and instead asserted they owned a fee interest in the driveway. But once they consulted with counsel following the construction of the fence, Plaintiffs raised for the first time, in their lawsuit, a claim for a right to the driveway based on an easement rather than a fee interest.

Although Plaintiffs initially sought damages for interference with their tire business and for emotional distress, after successful pleading motions, Plaintiffs claims were whittled down to two: 1) an action to quiet title based on a claim of prescriptive easement by adverse possession, and 2) for an injunction to restore Plaintiffs' access to the driveway by removal of the fence.

Frankly, up until this lawsuit was filed, this dispute was not a big issue to WEP or WRCI. WEP conducts oil drilling operations on many properties as a "unit operator". It conducts these drilling operations for a number of surface landowner entities, and for numerous Warren-affiliated and non-affiliated owners of interests in subsurface oil and mineral rights. WEP doesn't own the land in dispute *or* the subsurface rights. Rather, it is the entity licensed with the State of California to conduct the drilling operations on Lot G. Dealing with tenants regarding *surface rights* is thus not usually a part of WEP's role. That role is left up to the individual surface landowner, in this instance, WRCI. So how WEP ended up being named as the sole defendant in this lawsuit is unclear.

E. WRCI Is Forced into a Lawsuit

Once the informal dispute over the driveway blossomed into a lawsuit by Plaintiffs, WRCI was forced to take a more aggressive position regarding its surface rights. Thus, it filed a cross-complaint regarding Plaintiffs use of the land after the January 2009 effective date of termination of the lease. It also raised compulsory cross-claims regarding how Plaintiffs have attempted to shoehorn their business of servicing large tractor-trailers into just the tiny space they purchased from Mr. Gonzalez and WRCI's adjacent driveway. The cross-complaint highlights how these unlawful efforts have resulted in unfair treatment by Plaintiffs to WRCI, other neighbors, and the motoring public.

Even unlawfully using WRCI's driveway as a staging area for truck repairs, there still is not enough room for Plaintiffs to perform such repairs and comply with the law or be faithful to neighbors' property rights.[1] Thus, Plaintiffs' business practice has been to park their customer's trucks across WRCI's driveway, to block access to WRCI's driveway, and to double park those trucks in the street. There simply is too little room for Plaintiffs to conduct repairs on more than

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[1] Plaintiffs cannot operate the tire business properly in the business' current configuration. WRCI will present evidence at trial that if the business were configured differently, Plaintiffs could utilize the existing space to efficiently and safely operate their business.

one tractor-trailer on their own property without using the adjacent properties and streets as de facto staging areas. This practice is not only inconsiderate to WRCI and others, but it is dangerous and violates several laws designed to protect landowners and motorists.

F. Plaintiffs' Employment Practices Make Property Liability for WRCI a near Certainty

As discovery in this lawsuit has borne out, Mr. Dahlgren's concerns about liability for Plaintiffs' activities on the property were not unreasonable. As Plaintiffs have reluctantly revealed, they treat all of their employees – mechanics, secretaries, etc. – as "independent contractors." Although this practice is illegal, what it means for WRCI and its concerns about property liability are that if one of Plaintiffs' employees were to be injured while conducting repairs on WRCI's driveway, there would be no workers compensation insurance to cover the injury. WRCI would be a likely target of a lawsuit by the injured employee, if only for the reason that the injured employee had no other recourse in the absence of Plaintiffs carrying the required workers compensation insurance policy.

Thus, when Mr. Dahlgren proposed in June 2011 to rent the driveway to Plaintiffs for a de minimis amount, his greater concern was obtaining indemnity from Plaintiffs for the continuing property liability inuring because of Plaintiffs conducting repairs on the driveway. As discovery showed, this concern was not only reasonable, but prescient in light of the revelation of Plaintiffs' illegal employment practices.

G. S&B Is the Alter Ego of Bosco Tuan Tran and Sonny Tran

Finally, once WRCI was forced to participate in a lawsuit by virtue of Plaintiffs' claims, WRCI quickly learned that Plaintiffs' unlawful practices included their use and abuse of the corporate entity, S&B. Thus, as WRCI suspected, and discovery has shown, S&B is not an independent entity for purposes of California law. Bosco Tuan Tran and Sonny Tran treat the corporate entity as simply an extension of themselves. Evidence at trial will show the numerous ways in which they do this. The most obvious of these ways is the fact that the corporate entity gets to use the Trans' property for its business rent-free. There is no greater evidence of commingling of the individuals' assets and the corporate entity's assets, for purposes of alter ego liability, than the individuals forfeiting the fair market rental value of the property so that their purportedly separate corporation can use the property *gratis* and in perpetuity. (See, e.g., *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1285.)

II. LEGAL ISSUES

A. Plaintiff Did Not Obtain a Prescriptive Easement

Plaintiffs' primary theory for legal recovery is that they obtained a prescriptive easement over the driveway for ingress and egress based on their uninterrupted use of the driveway for a five-year period.[2] This theory fails in light of the existence of the lease, however.

WRCI expects Plaintiffs to argue that a prescriptive easement over the driveway had been by their predecessor, Mr. Gonzalez, and thus, when Mr. Gonzalez sold them Lot 8 and the tire business, he also sold them the perfected easement. (See, e.g., Civil Code, § 1104.) Even if Plaintiffs can prove the existence of an easement antedating the parties' ownership of the properties, the moment that Plaintiffs entered into the lease with Global Oil for the southernmost 5,000 square feet of Lot G – which on its face includes the driveway – any prescriptive easement that might have existed was extinguished. (See Civil Code, § 811; *Felgenhauer v. Soni* (2d Dist. 2004) 121 Cal.App.4th 445, 450; and *Heinkel v. McAllister* (1952) 113 Cal.App.2d 500, 502.)

To counter this obvious weakness in their claim, Plaintiffs have claimed and will present evidence at trial that the lease explicitly carved out the driveway. Plaintiffs will use a purported hand-drawn map that Plaintiff Bosco Tuan Tran claims he attached to the lease at the time it was executed by him to prove this claim.

WRCI will prove to the Court that not only was no such map was ever attached to the lease, but the map Mr. Tran presents to this Court was manufactured by him for this litigation. Further, WRCI will show that the lease does not contemplate or require reference to an attached map, further disproving that any map "excising the driveway" was part of the lease between the Plaintiffs and WRCI's predecessor.

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[2] "To establish the elements of a prescriptive easement, the claimant must prove use of the property, for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right." (*Main St. Plaza v. Cartwright & Main, LLC* (2011) 194 Cal.App.4th 1044, 1054.)

B. Plaintiffs Did Not Adversely Possess the Driveway

Although Plaintiffs have not explicitly pled it, in some instances Plaintiffs have made reference to an alternative theory of having obtained outright fee ownership to the driveway through adverse possession. Unlike a prescriptive easement, however, adverse possession requires a showing that the party asserting a fee title based on adverse possession prove they paid taxes on the property. (See *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 326.) Because of this tax payment requirement, Plaintiffs' theory of fee ownership patently fails.

As the unequivocal evidence will show, since purchasing Lot G in 2006, WRCI has paid property taxes on the entire property – including the driveway – every year up through the present. Plaintiffs will not present evidence of ever having paid any taxes on the driveway because they did not.

C. Plaintiffs Do Not "Need" the Driveway to Operate Their Tire Shop Business

A claim of a prescriptive easement is not dependent on what the future use of the easement area might be. (See *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 594-595.) The claim only depends on whether the past use of the easement by the dominant tenement evidences that the elements for a prescriptive easement were met for the requisite five year period. (See *Main St. Plaza, supra*, 194 Cal.App.4th at 1054.)

Notwithstanding this, Plaintiffs have signaled time and again that they plan to offer irrelevant evidence of their "need" for the driveway to conduct their tire business. And while such evidence will have no bearing on their prescriptive easement claims, Plaintiffs will nonetheless offer testimony and evidence that, without being able to use WRCI's driveway "for ingress and egress," Plaintiffs will be unable to properly pull customers' trucks onto and off of their property.

Assuming that Plaintiffs' "need" for the driveway becomes an issue at trial, WEP and WRCI will show that Plaintiffs can adequately ingress onto and egress off of their property without using WRCI's driveway.

D. Plaintiffs' Alleged Loss of Business Is Irrelevant

As detailed in WEP and WRCI's Motion in Limine No. 2, Plaintiffs will attempt to introduce information at trial regarding how much business they have purportedly lost as a result of the fence being constructed. They have designated cumulative witnesses to offer such testimony, and, if allowed, such testimony will add days to the trial. But such evidence and testimony is wholly irrelevant to Plaintiffs' current claims and relief.

E. Plaintiffs' Varying Theories of WRCI's and WEP's Sinister Motives Are Unsupported

Throughout motion practice and discovery, Plaintiffs have offered various theories as to why WRCI fenced off its driveway. Primary among these theories is that WEP and WRCI need *Plaintiffs' property*, i.e., Lot 8, to conduct drilling operations.[3]

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[3] The way in which Plaintiffs have repeatedly demonstrated in this litigation that they will callously make any convenient statement, no matter how false, to support their claims, is no better demonstrated than in this claim. Not only is the size of Lot 8, in comparison to Lot G, so small as to make a claim of WEP and WRCI's purported desire to obtain the Plaintiffs' lot for oil drilling facially ridiculous, but California law making oil rights dominant to surface rights also wholly undercuts the claim.

California law prefers the rights of subsurface oil and mineral rights owners over the rights of owners of the surface fee. (See, e.g., *Wall v. Shell Oil Co.* (2d. Dist. 1962) 209 Cal.App.2d 504, 515-517 [regarding right of subsurface owner to displace surface owner's appurtenant structures in order to make reasonable use and enjoyment of oil rights].) Thus, if the purported plan of WEP and WRCI was to pressure Plaintiffs to sell their surface rights in Lot 8 so that WEP could drill for oil under it, WRCI would not need to pressure Plaintiffs to sell their surface rights to fulfill such a goal. (See, e.g., First Amended Verified Complaint, at ¶ 14 ["In fact, when Defendant realized that Plaintiffs actually owned the Subject Property and did not need to vacate it, at one time, Defendant inquired on[sic] whether Plaintiffs wanted to sell the Subject Property."] WRCI could simply buy the subsurface rights from whomever owns them and either assert its right as the dominant tenement to conduct drilling operations (See *Wall, supra*, at 515-517), or, alternatively, horizontally drill to extract oil from a remote site, *as it is currently doing on Lot G.*

For other fanciful, yet readily disproven falsehoods by Plaintiffs regarding WEP's and WRCI's actions and motives, see Plaintiffs' allegations in their First Amended Verified Complaint about WEP making false reports to Long Beach officials about Plaintiffs' use of their property. (See First Amended Verified Complaint, at ¶ 14 ["During the above time period, Plaintiffs started receiving harassment from city of Long Beach, such as spontaneous and unreasonable business inspections that never occurred before the incident with Defendant."].) Then compare such claims to Plaintiffs' subsequent anti-SLAPP motion claiming that WRCI's cross-complaint was a SLAPP suit because WRCI had *never* complained to Long Beach officials about the nuisances maintained by Plaintiffs. (See Plaintiffs' Special Motion to Strike, at 16:25-28 ["First, and as mentioned above, if Plaintiffs were performing the alleged wrongful conducts[sic] for about three (3) years, then why didn't Defendant report such conducts[sic] to law or code enforcements[sic] to cite or take action against Plaintiffs."].)

Lot 8 is simply too small to conduct drilling operations. Moreover, with today's extraction technology, including directional drilling, which allows WEP to access oil rights five miles horizontally distant from the well site, there is no subsurface oil or mineral right that could be accessed from Lot 8 that isn't already accessible from Lot G or anywhere else within the Port area.

Like many of Plaintiffs' unsupported claims regarding WEP's and WRCI's alleged motives and actions, the attempt to cast WEP and WRCI as a Collis Huntington-type corporate baron attempting to drive Plaintiffs off their land, is simply a fantastic tale designed to attempt to engender sympathy for the Plaintiffs. It has no connection with reality.

Moreover, as Mr. Dahlgren will testify at trial, WRCI wanted to keep the driveway configured as it was, and would have preferred to leave it unfenced. This is because it was more convenient for WRCI to have a driveway available off "I" Street for accessing the southern portion of Lot G. It was Plaintiffs' increasingly aggressive use of the driveway, their refusal to acknowledge reality regarding its ownership, and the growing concerns over property liability stemming from Plaintiffs' illegal repair activities on the driveway, that ultimately forced WRCI to fence in the driveway.

III. CONCLUSION

What trial will show is that Plaintiffs do not have any interest in the driveway. Because, as they admit, they erroneously believed they owned the driveway until 2011, they refused to vacate the driveway following termination of the lease. WRCI was forced to engage in "self-help" by fencing off its access as a result.

In failing to timely vacate both the driveway and the gated storage area behind it, Plaintiffs have breached the lease agreement, and, with respect to the driveway portion of the lease, did so for more than two years. In doing so, Plaintiffs caused WRCI to incur unnecessary costs to fence off the property, and denied WRCI use of its southern gate during that time period.

Given these facts and circumstances, WEP will ask the Court to find in its favor on

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Even if inconsistent with their prior statements or readily ascertained facts, Plaintiffs will say whatever in the moment they feel will immediately benefit them. The Court should be mindful of this history of repeated fabrications in assessing Plaintiffs' credibility as witnesses at trial.

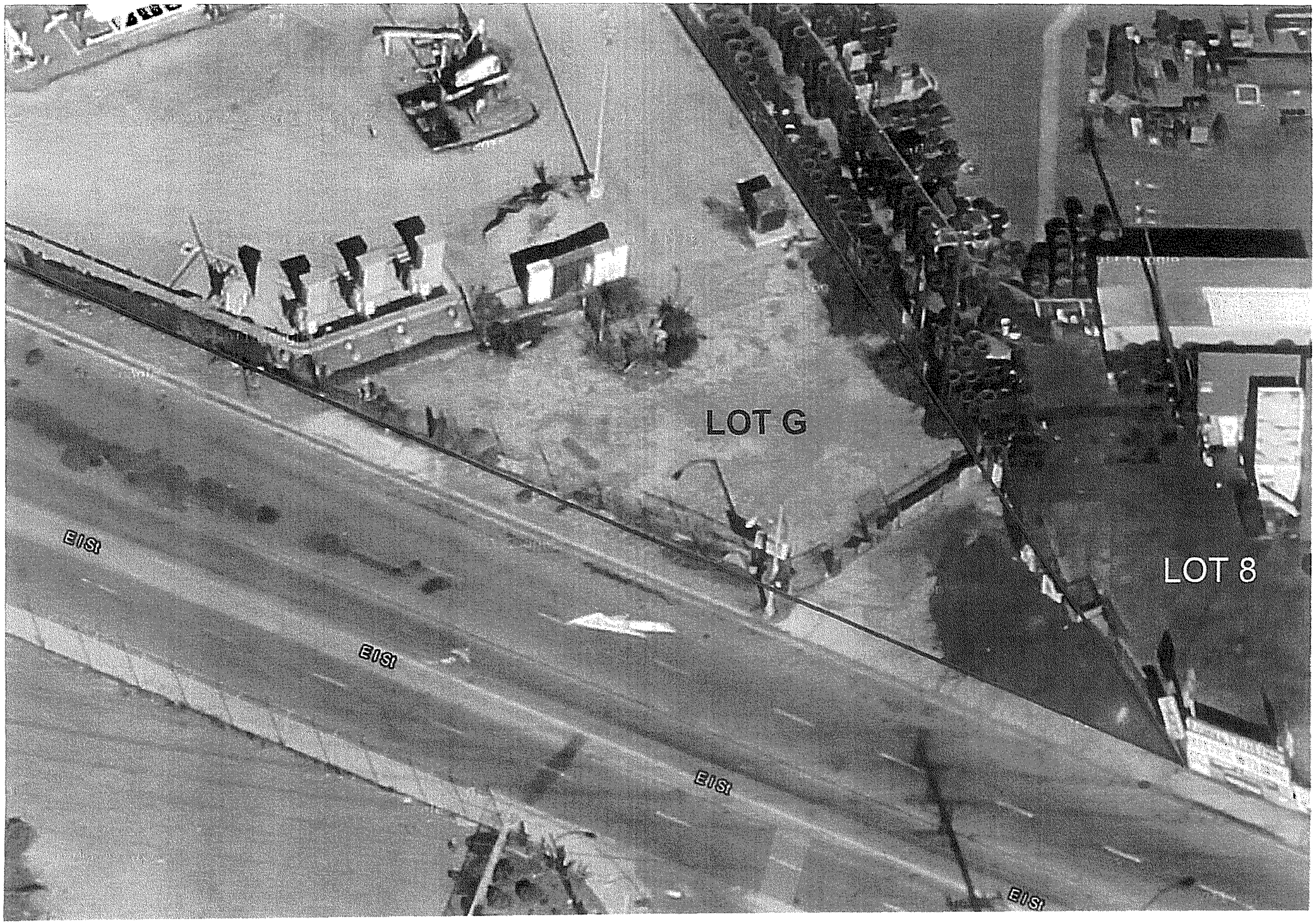
Plaintiffs' complaint, and find in WRCI's favor on WRCI's cross-complaint. In finding in WRCI's favor, WRCI asks the Court to award it $42,388.00, consisting of contractual damages of $34,000.00 on the lease for holdover use of the driveway for 34 months, and $8,388.00 for the cost of building the fence to bar Plaintiffs' access to the property. Additionally, in finding for WRCI, WRCI asks the Court to award punitive damages against Plaintiffs to punish their past trespasses and infringements on WRCI's use of its property, and to deter Plaintiffs from trespassing on the property in the future and from continuing to operate their tire business in a manner that grossly infringes upon the rights of WRCI and the public.

Dated: May 30, 2013

MICHEL & ASSOCIATES, P.C.

Joshua Robert Dale
Attorneys for Defendant WARREN E&P, INC. and Cross-complainant WARREN RESOURCES OF CALIFORNIA, INC.

EXHIBIT "A"


LOT G
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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On May 30, 2013, I served the foregoing document(s) described as

TRIAL BRIEF OF DEFENDANT WARREN E&P, INC. AND CROSS-COMPLAINANT WARREN RESOURCES OF CALIFORNIA, INC.

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Dave Vo, Esq.
VO LAW FIRM
7372 Prince Drive, Suite 108
Huntington Beach, CA 92647

_ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on May 30, 2013, at Long Beach, California.

_ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on May 30, 2013, at Long Beach, California.

X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on May 30, 2013, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_ (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Christina Sanchez

CHRISTINA SANCHEZ